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| 09/965,776 | 09/27/2001 | Harald Beck | 10191/1975 | 3434 |
| 26646 7590 06/01/2009 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004 | | | | |
| EXAMINER WILLIAMS, THOMAS J | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/965,776

Applicant(s)

BECK ET AL.

Examiner

Thomas J. Williams

Art Unit

3657

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8 and 11-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8, 11-18, 20, 22-29, 31 and 33-40 is/are rejected.
- 7) ☒ Claim(s) 19, 21, 30 and 32 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on May 4, 2009 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 8 recites the limitation "the limit value" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 8, 33 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,139,117 to Shirai et al.

Re-claims 8, 33 and 34, Shirai et al. teach a method of controlling a wheel brake of a vehicle, the method comprising: controller 220 determines a desired braking input based on a braking input device 154 and at least one other control system (such as the ignition system, i.e. on or off); applying a brake force (or brake pressure) as a function of the desired input; the applied brake force (or brake pressure) is limited to a maximal value (such as the value set by the operator) when the vehicle is at a standstill (the method is carried out during a parking control); the limit (or maximal value) is based on at least one wheel brake not being braked (such as during periods when only the rear wheels are utilized, see column 25 lines 59-67 to column 26 lines 1-5). However, Shirai et al. fail to teach the parking brake input device as a pedal, but rather teach a rotating knob. Shirai et al. does teach the use of pedals for the parking brake input device, see column 15 lines 18-21. Each is functionally equivalent for initiating a requested level of parking brake force. It would have been obvious to one of ordinary skill in the art to have provided the apparatus of Shirai et al. with a parking brake pedal, rather than the knob, since each device would yield the same information to the controller.

8. Claims 11-16, 18, 22-27, 29, 34-36 and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shirai et al. in view of US 6,382,741 to McCann et al.

Re-claims 11-14, 18, 22-25, 29, 34 and 38, Shirai et al. teach a method and controller for determining a value of a setpoint for an operating parameter of a braking system (in particular, a park brake force as requested by the operator) as a function of an input device 154 and the condition of the ignition system. However, Shirai et al. fail to teach the parking brake input device as a pedal, but rather teach a rotating knob. In addition Shirai et al. fail to teach regulating the setpoint from the determined value to a limit value, when a standstill condition exists.

Shirai et al. does teach the use of pedals for the parking brake input device, see column 15 lines 18-21. It would have been obvious to one of ordinary skill in the art to have provided the apparatus of Shirai et al. with a parking brake pedal, rather than the knob, since each device would yield the same information to the controller.

McCann et al. teach method and controller that varies a level of park brake force, in accordance with changing vehicle conditions, such as inclination and loading. In particular as the vehicle is unloaded the level of park brake force can be reduced, thus reducing the setpoint from the determined value (i.e. the original set value) to a limit value (i.e. the newly determined necessary value). It would have been obvious to one of ordinary skill in the art to have provided the apparatus of Shirai et al. with the capability for adjusting the setpoint value as taught by McCann et al., thereby reducing the load on the electric motors during extended periods.

Re-claims 15 and 26, the system of Shirai et al. is designed to operate on rear wheels only, as such a two wheel vehicle meets the limitations of the claims.

Re-claims 16 and 27, modification of the brake force would include releasing, to some degree, the brakes at at least one wheel.

Re-claims 35, 36, 39 and 40, Shirai et al. teach the brake force is applied to less than all of the at least two wheel brakes; the desired value is generally less than the maximal physically implementable value of the brake system. In other words the parking brake is capable of being applied at numerous levels, all of which are less than the maximal physically implementable value of the brake system.

9. Claims 17 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shirai et al. in view of McCann et al. as applied to claims 11 and 22 above, and further in view of US 6,305,511 to McCann et al.

Re-claims 17 and 28, Shirai et al. as modified by McCann et al. fail to teach a hydraulic park brake system, but rather teach an electric park brake system. And as such fail to teach a single control valve linking pressure control circuits of two different wheel brakes. McCann et al. '511 teach a hydraulic park brake system and a control valve linking the pressure control circuits. It would have been obvious to one of ordinary skill in the art to have provided the apparatus of Shirai et al. with a hydraulic park brake circuit and control valve as taught by McCann et al. '511, as each is functionally equivalent and would have yielded expectant results, that being the application of the parking brakes.

10. Claims 20 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shirai et al. in view of McCann et al. as applied to claims 11 and 22 above, and further in view of US 5,190,358 to Holzmann et al.

Re-claims 20 and 31, Shirai et al. as modified by McCann et al. fail to teach a buildup gradient for the operating parameter is limited, the operating parameter being the parking brake force. Holzmann et al. teach a vehicle brake system having a pressure buildup gradient limited to a set value, see element 61 of figure 5. It would have been obvious to one of ordinary skill in the art to have provided the apparatus of Shirai et al. with a buildup gradient limited to a set value as taught by Holzmann et al., thus preventing undo damage to the brake equipment.

Allowable Subject Matter

11. Claims 19, 21, 30 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yamamoto et al. and Shirai et al. each teach a system where less than all the wheels are operated.

13. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Thomas Williams whose telephone number is 571-272-7128. The examiner can normally be reached on Wednesday-Friday from 6:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi, can be reached at 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3657

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-6584.

TJW

/Thomas J. Williams/
Primary Examiner, Art Unit 3657

May 28, 2009